

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOSEPH PIESCIUK,	:	
	:	
Petitioner,	:	NO. 1:07-CV-00637
	:	
v.	:	
	:	
STUART HUDSON, WARDEN,	:	OPINION AND ORDER
MANSFIELD CORRECTIONAL	:	
INSTITUTION,	:	
	:	
Respondent.	:	
	:	

This matter is before the Court on the Magistrate Judge's February 11, 2008 Report and Recommendation (doc. 12), to which no objections were filed.

The Magistrate Judge recommended the Court grant Petitioner's unopposed motion for leave to stay proceedings and hold in abeyance (doc. 3), so that Petitioner may fully exhaust his state court remedies (doc. 12). Having reviewed this matter, the Court finds the Magistrate Judge's Report and Recommendation well-taken in all respects (doc. 12), and AFFIRMS and ADOPTS such Report and Recommendation (Id.). Accordingly, the Court GRANTS Petitioner's Motion to Stay (doc. 3), and administratively STAYS and TERMINATES Petitioner's Petition (doc. 2), on the Court's active docket, pending the exhaustion of Petitioner's Ohio remedies. The Court conditions the stay on Petitioner's filing of a motion to reinstate the case on the Court's active docket within

thirty (30) days after fully exhausting his state court remedies through the requisite levels of state appellate review. Petitioner will be granted leave to reinstate the case on the Court's active docket when he has exhausted his Ohio remedies, should he make a showing that he has complied with the conditions of the stay.

The Court further finds that a certificate of appealability should not issue under the standard set forth in Slack v. McDaniel, 529 U.S. 473, 484-85 (2000), which is applicable to this case involving a recommended stay of the Petition so that Petitioner can exhaust state court remedies. "Jurists of reason" would not find it debatable whether this Court is correct in its procedural ruling that Petitioner has failed to exhaust state court remedies and that the case should be stayed (as opposed to dismissed without prejudice) pending exhaustion of such remedies. Finally, the Court CERTIFIES, pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order would not be taken in "good faith" and therefore DENIES Petitioner leave to appeal in forma pauperis upon a showing of financial necessity. Fed. R. App. P. 24(a), Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Dated: April 29, 2008

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge